



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 05, 2023

IN THE MATTER OF:

Appeal Board No. 626074

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective June 14, 2022, on the basis that the claimant voluntarily separated from employment without good cause; and in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to June 14, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed September 21, 2022 (), the Administrative Law Judge sustained the initial determination of voluntary leaving of employment without good cause and found the issue of misconduct academic.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked full time as a driver for approximately one and one-half years until June 13, 2022. The claimant worked Sunday, Monday, Wednesday and Thursday from 8:30 am to 10:30 pm. As a condition of his employment he was required to possess a commercial driver's license with a tanker endorsement.

In October 2021, the claimant was issued a speeding ticket while driving his personal car. The ticket was returnable to a town court approximately two hours from his residence. The claimant entered a plea of "not guilty" and was told he would receive a letter in the mail with further instructions. The claimant did not receive any further correspondence from the court thereafter.

The claimant was not scheduled to work on June 14, 2022. That day, the employer received notification that the claimant's driver's license had been suspended, effective May 20, 2022. The employer confronted the claimant about his suspension. The claimant was unaware that his license had been suspended but told the employer that he had been cited for speeding and had not received any further correspondence from the court.

The next day, the claimant went to the Department of Motor Vehicle to inquire about the status of his driver's license. He paid a fee to have the suspension lifted immediately. The claimant then notified the employer that the suspension had been lifted and his driver's license restored. However, the employer discharged the claimant on June 16, 2022 for failing to possess a valid driver's license. No other work was available for the claimant.

OPINION: The credible evidence establishes that the claimant never received notification from the court that his driver's license had been suspended after he entered a "not guilty" plea to a speeding ticket six months earlier. We accept the claimant's credible testimony in this regard and find it significant that the day after he learned that his driving privileges were suspended, he took immediate action to successfully have it reinstated.

A claimant is deemed to have provoked his discharge where his own voluntary acts violate a known obligation to the employer, leaving the employer no choice but to discharge them. (See Matter of DeGrego, 39 NY2d 180 [1976]). Here, the record does not support finding that the claimant voluntarily engaged in conduct which resulted in the suspension of his driver's license or that the employer had no choice but to discharge him. We note that the claimant promptly entered a plea of "not guilty" upon receipt of the traffic ticket in anticipation of correspondence from the court for further instruction. Having followed the court's procedure, the claimant had no further obligation to contact the court and therefore the suspension of his license was not due to any act or omission on his part. Given these circumstances, we cannot conclude that the claimant voluntarily engaged in

actions that violated his obligation to maintain a valid license. Additionally, although the license was immediately reinstated on June 15, 2022, the employer has provided no evidence to establish why it could not have permitted the claimant to continue his driving duties at that point and instead was compelled to terminate his employment. In light of the foregoing, we find that the claimant not only did not provoke his discharge, but his actions were not misconduct for unemployment insurance purposes. While it was the employer's prerogative to discharge him, we conclude that the claimant's employment ended under non-disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determinations are overruled.

The claimant is allowed benefits with respect to the issues decided herein.
(Al reclamante se le asignan beneficios con respecto a los temas decididos en el presente.)

GERALDINE A. REILLY, MEMBER